

## **REMARKS**

Applicant acknowledges the Advisory Action mailed July 6, 2009.

In the Advisory Action, the Primary Examiner refused to enter the Amendment After Final Rejection as it raised new issues that would require further consideration and/or search. In particular, it was noted that the limitation "said master control assembly structured to periodically poll each of said media players to receive further synchronization data from each of said media players and to simultaneously and uniformly synchronize said delivery of said media selection by said media players based on said polled and received synchronization data" would require further consideration and/or search.

Reconsideration of this application, as amended, is requested. Claims 1-36 and 43-49 remain in the application. Claims 37-42 have been withdrawn from consideration in the present application. Claims 1 and 44 have been amended to more particularly point out and distinctly claim the invention of the present application. Support for the amendments to claims 1 and 44 are provided on at least page 22, lines 2-12 of the present invention. It is respectfully submitted no new matter has been added by these claim amendments.

Claims 1-12 and 34-36 were rejected under 35 USC 103(a) as being unpatentable by Lord, U.S. Patent Application Publication 2003/0002849 (hereafter Lord) in view of Holm, U.S. Patent Application Publication 2003/0070181 (hereinafter Holm), and further in view of "Official Notice", as set forth on pages 2-7 of the Office Action dated April 27, 2009. Claims 13-18, 29-30, 44-45 and 47-48 were rejected under 35 USC 103(a) as

being unpatentable over Lord, Holm and "Official Notice" in view of Bruck et al., US Patent 7,143,428 (hereinafter Bruck). Claims 28 and 32 were rejected under 35 USC 103(a) as being unpatentable over Lord, Holm and "Official Notice" in view of Pantoja, US Patent Application Publication 2003/0115598 (hereinafter Pantoja). Claim 43 was rejected under 35 USC 103(a) as being unpatentable over Lord, Holm and "Official Notice" in view of Reed, US Patent Application Publication 2008/0270570 (hereinafter Reed). Claim 33 was rejected under 35 USC 103(a) as being unpatentable over Lord, Holm and "Official Notice" in view of Fasciano et al., US Patent 5,467,288 (hereinafter Fasciano). Claims 19-24 were rejected under 35 USC 103(a) as being unpatentable over Lord, Holm, "Official Notice" and Bruck in view of Pantoja. Claims 31 and 49 were rejected under 35 USC 103(a) as being unpatentable over Lord, Holm, "Official Notice" and Bruck in view of Zenith, US Patent 6,519,771 (hereinafter Zenith). Claim 46 was rejected under 35 USC 103(a) as being unpatentable over Lord, Holm, "Official Notice" and Bruck in view of Reed. Claims 25-27 were rejected under 35 USC 103(a) as being unpatentable over Lord, Holm, "Official Notice", Bruck and Pantoja in view of Du Val et al., US Patent Application Publication 2002/0016820 (hereinafter Du Val).

In regards to claim 1, the Examiner asserted "...Lord teaches the invention as claimed comprising: at least two media storage mediums, each of said storage mediums at least containing a substantially identical copy of a particular media selection ([0007]) (memories of PVRs containing common program); at least two media players structured to selectively deliver said media selection to a user from a corresponding one of said storage mediums ([0007]) (PVRs delivers the media to users from the memories); each of said media players including a control assembly structured to selectively control

and regulate delivery of said media selection to the user ([0019]); at least one of said media players being selectively designatable as a slave unit ([0031]); a master control assembly operatively associated with said media players ([0022]); a connectivity assembly structured to establish a communicative link at least between said slave unit and said master control assembly ([0020]; 18, fig. 2); said master control assembly structured to receive synchronization data of said media selection from each of said media players ([0031]) (PVR sent out status message after every command is received, wherein the status message is received by the PVR that sent out the command); and said master control assembly structured to simultaneously and uniformly control said delivery of said media selection by said media players (PVR that sent out the command structured to send command (e.g., rewind, fast forward) to control the output of PVRs of synchronize program (i.e., simultaneously control and uniformly output) ([0031])).

The Examiner further asserted at paragraph 7 on page 4 of the office action:

Although Lord does not specifically teach said master control assembly structured to simultaneously and uniformly control said delivery of said media selection by said media players based on said received synchronization data, however, Lord teaches said master control assembly structured to simultaneously and uniformly control said delivery of said media selection by said media players and to receive said synchronization data ([0031]). Therefore, it would have been obvious to one skilled in the art at the time of the invention was made to include said master control assembly structured to simultaneously and uniformly control said delivery of said media selection by said media players based on said received synchronization data because by doing so it would ensure that the master media player and other media player stay in synchronization (i.e., master control assembly sends command such as fast forward after receiving status message such as the time or the frame into the show (based on the received synchronization data)).

The Examiner then asserted "Holm teaches portable storage medium ([0052] and [0053])". Lastly, the Examiner admits "Lord and Holm do not specifically teach periodically poll". The Examiner then takes "Official Notice" in that "the concept and advantage of periodically polling is known and accepted in the art".

Amended claim 1 is directed to an interactive, multi-user media delivery system including, inter alia, "a) at least two portable media storage mediums, each of said portable storage mediums at least containing a substantially identical copy of a particular media selection; b) at least two media players structured to selectively deliver said media selection to a user from a corresponding one of said portable storage mediums; c) each of said media players including a control assembly structured to selectively control and regulate delivery of said media selection to the user; d) at least one of said media players being selectively designatable as a slave unit; e) a master control assembly operatively associated with said media players; f) a connectivity assembly structured to establish a communicative link at least between said slave unit and said master control assembly; g) said master control assembly structured to receive synchronization data of said media selection from each of said media players at commencement of delivery of said media selection, said synchronization data including a title and location designator associated with said media selection; and h) said master control assembly structured to periodically poll each of said media players to receive further synchronization data from each of said media players and to simultaneously and uniformly synchronize said delivery of said media selection by said media players based on said polled and received synchronization data". The system of amended claim 1 enables simultaneous viewing and control of "a substantially identical copy of a particular media selection" from a *portable storage medium*

to users to create a common media experience among the users. As stated in the instant application at page 2, lines 1-6, "due to convenience, file size and/or copyright issues, a still very popular form for the delivery of media to a user is through the use of portable storage mediums that can be easily transported, owned by an individual, shared, rented, and/or mass produced for distribution and/or sale to a large number of users". By utilizing portable storage mediums, the system of claim 1 can be utilized with the very large number of portable storage mediums, e.g., DVDs, CD, etc., already sold and/or distributed without having to reconfigured or modify the portable storage mediums (see instant application at page 2, line 13-21). Upon commencement of delivery of the media selection, a master control assembly receives synchronization data, including a title and location designation of the media selection, from each media player. Furthermore, the master control assembly of the system periodically polls and receives synchronization data of the media selection from each of the media players to simultaneously and uniformly synchronize the delivery of the media selection by the media players based on the polled and received synchronization data so each user experiences the same media selection at the same time.

Lord is directed to a method, apparatus and system for synchronizing the video output of personal video recorders in two or more locations. A broadcast program is received and recorded on a personal video recorder on a first personal video recorder. A second personal video recorder having a common program residing in its memory is selected. A signal is then transmitted to or from the first personal video recorder to simultaneously initiate a start sequence in each of the first and second personal video recorders.

Lord does not disclose "said master control assembly structured to receive synchronization data of said media selection from each of said media players at commencement of delivery of said media selection, said synchronization data including a title and location designator associated with said media selection; and said master control assembly structured to *periodically poll each of said media players to receive further synchronization data from each of said media players* and *to simultaneously and uniformly synchronize said delivery of said media selection by said media players* based on said polled and received synchronization data" (emphasis added) as recited in amended claim

1. In paragraphs [0031] and [0046] of Lord, Lord discloses that to synchronize the two PVRs the personal video recorder that initiated the viewing will send out a status message after every command received at the PVR or at a predetermined rate if no commands have occurred. In other words, the system of Lord sends out a "status message" to synchronize the PVRs in two situations. In the first situation, the initiating PVR send out a status message in response to the sending or receiving of a command that is inputted by one of the users. That is, the status message is sent in response to an external input of a user, e.g., a command, entered into the PVR and not in response to the initiating PVR polling all other devices to receive synchronization data. In the second situation, the initiating PVR sends out a status message "at a predetermined rate, e.g., once every minute, if no commands have occurred". In this situation, status messages are sent out in response to nothing, neither in response to a command from one of the PVR nor in response to data polled from each of the PVRs.

In contrast, the system of claim 1 simultaneously and uniformly synchronizes delivery of the media selection from the portable storage medium based on polled and

received synchronization data received from each of said media players by periodically polling each of the media player to receive the synchronization data. No where in Lord is it disclosed or suggested that either PVR polls any other PVR to ensure they are synchronized. The initiating PVR of Lord either sends a status message in response to a command or sends a blanket command without regard for the status of the other PVRs. Therefore, it is respectfully submitted that the system of amended claim 1 is patentably distinct over Lord and is in condition for allowance.

In regards to the Examiner taking "Official Notice" for polling, this assertion is respectfully traversed for two reasons. First, the Examiner merely states that polling "is known and accepted in the art" without pointing to any evidentiary support in the record and without setting forth any explicit reasoning for taking such notice. This is contrary to the guidelines provided in MPEP section 2144.03, which outlines when and how to use "Official Notice", and the precedent set forth in *In re Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697:

This assessment of basic knowledge and common sense was not based on any evidence in the record and, therefore, lacks substantial evidence support. As an administrative tribunal, the Board clearly has expertise in the subject matter over which it exercises jurisdiction. This expertise may provide sufficient support for conclusions as to peripheral issues. With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings".

Secondly, assuming arguendo that polling is known, none of the references of record disclose polling or the use of polling to retrieve synchronization data from various

devices to use such data to then synchronize the devices. On page 5, lines 1-3 of the office action, the Examiner asserted it would have been obvious "to include periodically polling because by doing so it would increase the alertness of their systems by allowing the device to repeatedly checked for synchronization data". However, in the system of Lord, the initiating device never goes out to check other devices for synchronization data and therefore would never necessitate the need for polling. As described above, the initiating device of Lord either sends out a status message in response to a command, i.e., an external input from a user, or sends out the status message at a predetermined rate. No where in Lord is it disclosed or suggested to check even once synchronization data from a device, rather than pushing the information from the initiating device. None of the references of record disclose or suggest 1.) periodically polling each media player, 2.) receiving synchronization data from each media player due to the polling and 3.) synchronizing each media player based on the polled and received synchronization data as recited by amended claim 1.

Furthermore, the other references cited by the Examiner do not cure the deficiencies of Lord. For example, Bruck (US Patent 7,143,428) is directed to a system for viewing a broadcast video signal such as a television program including text chat capability; Pantoja (US 2003/0115598) is directed to a system and method for interactively producing a web-based multimedia presentation with no teaching or suggestion of simultaneous delivery nor received synchronization data from media players; and Fasciano et al. (US Patent 5,467,288) is directed to a single digital audio workstation providing digital storage and display of video information. Similar to Lord and Bruck et al., Zenith discloses a system for displaying broadcast video, e.g., a broadcast television video (see



FIG. 1 of Zenith). Du Val et al. is directed to a system and method for distributing in real-time interactive data extracted from a video signal to a plurality of client computers via a computer network, a plurality of data source computers extract the interactive data from the video signals, forward them to a distribution server which buffers the interactive data and broadcasts the interactive data to a Web server cluster and a program executing on each client computer periodically sends updated requests to the web server cluster to retrieve new interactive data for display to the user. The client computers of Du Val et al. poll the web server to get updates and not receive simultaneous deliver of a media selection from a master control assembly based on synchronization data from each of media players, e.g., client computers. Lastly, Holm is directed to an interactive TV client device with integrated removable storage system.

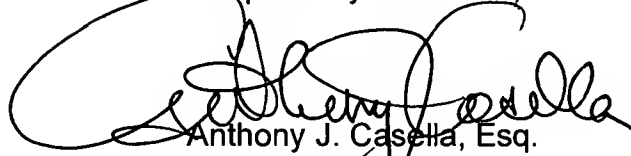
Therefore, it is respectfully submitted amended claim 1 is patentably distinct and not rendered obvious by Lord, Holm, Bruck et al., Pantoja, Fasciano et al., Zenith and Du Val et al. alone or in any combination. Furthermore, it is respectfully submitted that dependent claims 2-36 and 43, depending directly or indirectly from amended claim 1, are patentable for at least the reasons stated above in regard to amended claim 1.

Amended claim 44, along with dependent claims 45-49, includes at least the limitations of amended claim 1 and is therefore patentable for the same reasons put forth for amended claim 1.

In view of the preceding amendment and remarks, it is submitted that the claims remaining in the application are directed to patentable subject matter, and allowance is solicited. The Examiner is urged to contact applicant's attorney at the number below if the

Examiner believes a telephone or personal interview would facilitate the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anthony J. Casella", written over the printed name.

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